

Dairy Nutrient Management Task Force

October 17, 2000

Minutes approved at the December 20, 2000 meeting of the Dairy Nutrient Management Task Force held in North Bend, Washington

Executive summary

Minutes of the September 20, 2000 meeting were delayed to the November 21, 2000 meeting to give the Task Force sufficient time for review.

Most action items were completed. Staff continues to seek representation from WSU/CES. Ecology is working to improve wording in NOC letters. The Conservation Commission is surveying district financial needs. NRCS is looking at comparing nitrogen-limited plans against phosphorus-limited plans to assess impacts.

The issue of standards changing during the planning, implementation, or revision of dairy nutrient management plans was discussed. Senator Rasmussen directed staff to draft a letter to Leonard Jordan (NRCS) requesting an opportunity for Task Force review of the Phosphorus Index.

Ease of access to information about individual dairies was discussed. At issue was balancing easy public access with reasonable protection of privacy, and the potential for abuse of some information. Representative Linville described this as a sensitive issue.

Discussion occurred about Ecology enforcement tools. Discharges from municipal and dairy sources were contrasted. Dairy industry representatives pointed out the lack of parity between fines against municipalities and those levied against dairy producers.

Clarification was sought on approval of dairy plans. The approval checklist approved by the Conservation Commission does not require NRCS approval of the plan. Unless a plan was written wholly or in part by NRCS, their procedures do not require NRCS approval of the plan.

Pollution from neighboring farms was discussed. This is a specific item in the 2000 legislation. Ecology will likely follow the same protocol as before, i.e., sampling above and below the dairy to identify pollutants entering and leaving the operation. The issue of increased flows caused by upstream practices was introduced.

To date, Ecology has assessed about \$445,000 in penalties. These have been reduced by Ecology or the PCHB to \$349,000. Total collected to date is \$79,000. Wording of NOC letters is being reviewed. Ecology reinforced a commitment to continue working with the Task Force.

Engineering estimates presented at the last meeting were revisited. The calculated need is now estimated at 29.5 FTEs. This does not include the staff needed to actually write plans.

Adequacy of conservation district funding was discussed. The Whatcom and Skagit conservation district representatives stated they did not receive enough funds. Senator Rasmussen asked the Conservation Commission to revise their budget request with the Office of Financial Management as soon as possible.

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Some suggestions from conservation districts were reviewed. These suggestions were targeted at increasing flexibility for dairy producers in following their dairy nutrient management plans. In the future, dairy inspectors may clarify specific information in a plan with the author(s) of the plan.

The final report of the Task Force was briefly discussed. Staff will begin work on a rough outline for Task Force review.

Welcome and attendees

[NOTE: Future action items are underlined in the minutes.]

The Dairy Nutrient Management Task Force ("Task Force") met at the Mount Vernon Elks Lodge in Mount Vernon, Washington on October 17, 2000. Senator Marilyn Rasmussen called the meeting to order at 10:10 a.m. with a quorum present. Senator Rasmussen welcomed new members and invited attendees to introduce themselves.

Because of cancellations, the agenda was revised at the beginning of the meeting.

Task Force voting members and voting alternates attending were:

- Clifford Bates (Benton-Franklin Health District)
- Representative Bruce Chandler (Legislature)
- Fred Colvin (Dairy industry representative – alternate)
- Dan DeGroot (Dairy industry representative – alternate)
- Tom Eaton (U.S. Environmental Protection Agency)
- Representative Kelli Linville (Legislature)
- Senator Marilyn Rasmussen (Legislature)
- Roger Short (Dairy industry representative)
- Ron Shavlik (USDA Natural Resources Conservation Service)
- Dick Wallace (Ecology)

Other attendees were:

- Ryan Bartelheimer (Snohomish Conservation District)
- Debbie Becker (Wash. State Dairy Federation)
- Dick Bengen (Dairy industry representative – alternate)
- Stephen Bernath (Ecology staff)
- George Boggs (Whatcom Conservation District)
- Chris Cheney (Wash. State Dairy Federation)
- Dave Johnson (Legislative staff)
- Marvin Johnson (Conservation Commission staff)
- Phil KauzLoric (Ecology – alternate)
- Carolyn Kelly (Skagit Conservation District)
- Ken Koch (Ecology staff)
- Bob Lee (Legislative staff)
- Tom Salzer (Conservation Commission staff)
- John Schuh (Skagit Conservation District)
- John Stuhlmiller (Legislative staff)

Minutes

The minutes of the September 20, 2000 meeting were distributed. Members did not have an opportunity to review them prior to the October 17 meeting. The consensus of the body was to delay approval of the September minutes to the November meeting as this would provide necessary time for reviewing the draft minutes.

Action items – old

Progress on nine action items from the September 20 meeting was reported.

1. **UNDERWAY: WSU/CES representative** – No response to date from WSU/CES. Staff will work with Steve Meyer (Executive Director, Conservation Commission) to obtain a representative.
 2. **COMPLETED: Ecology to provide a running account of penalties** – Ecology reported on this at today's meeting.
 3. **COMPLETED: Ecology to provide numbers of dairies and animals by region** – Ecology on this at today's meeting.
 4. **COMPLETED: Task Force to invite Ecology stakeholder group** – Stephen Bernath (Ecology) spoke to the Task Force today.
 5. **UNDERWAY: Ecology to improve NOC letter wording** – Ecology's stakeholder group is involved.
 6. **COMPLETED: Bartelheimer to continue engineering discussion with Task Force** – Bartelheimer discussed revision of his estimate at this meeting.
 7. **UNDERWAY: Commission to survey districts** – Raw information was passed around.
 8. **COMPLETED: King Conservation District to be sent meeting minutes** – done. Staff later clarified with King CD that they would like to receive future meeting minutes.
 9. **UNDERWAY: NRCS to compare N- and P-limited plans** – Shavlik discussed with Task Force.
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Phosphorus Index

Shavlik spoke briefly about the Phosphorus Index and suggested the Task Force schedule time to hear from the NRCS on phosphorus issues. The idea of a map of eastern Washington was also revisited.

Determination of threshold values for phosphorus is difficult. Shavlik suggested the Task Force should determine whether or not to apply the Phosphorus Index retroactively to older plans. Concern was expressed about changing the rules. It was suggested that existing dairy nutrient management plans should be left alone until the phosphorus issue is resolved. Wallace said

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there ought to be a reasonable time frame for incorporating new or revised standards, perhaps after the first round of plans is done.

Shavlik noted the NRCS technical team is struggling with these issues and requested sufficient time on the November agenda to cover the Phosphorus Index and respond to questions. After additional discussion, Senator Rasmussen directed staff to write a letter to Leonard Jordan (State Conservationist, NRCS) requesting an opportunity for the Task Force to review the phosphorus standard and provide input.

Boggs distributed copies of the spring 2000 edition of the Whatcom Conservation News containing an article on managing phosphorus. Filter strips (practice code 393) effectively eliminates phosphorus movement into surface waters. He said his district has close to 100 farms planned with thousands of acres protected by filter strips.

Wallace noted the issue is more at the policy level than technical, and suggested anchoring on a date then implement a transition period for phasing in new or changed standards. He complimented the Whatcom Conservation District for their “can do” approach.

Availability of dairy information

Becker raised a concern over data available over the Internet, specifically, names and addresses of individuals with dairies. Wallace provided some background, explaining that the U.S. Environmental Protection Agency developed a GIS layer about dairies several years ago, and Ecology currently maintains this information.

Koch said there was a 1995 data set, and a 1996 data set, and most recently, a 2000 data set. The public can import and view the data if they have the right tools, and the tools are free. The GIS layers include the number of acres and number of cows by dairy.

Representative Linville described this as a sensitive issue because of the potential for information to be abused.

Boggs said the Whatcom Conservation District is proposing to expand an exemption to the Public Disclosure Act, essentially putting nitrogen and phosphorus values from soil tests into the category of exempted research data. The State must allow some protection to the agriculture community. Summaries of the data would still be available but sample-by-sample results would be exempted. Short said his conservation district (Jefferson) did some water quality testing and they discovered the water was better than expected. It may actually help to get this information out to the public.

Bengen noted that recent lawsuits are aimed at settlement. Cheney described letters from attorneys as “extortion letters” that say a lawsuit could go away if a cash settlement is made.

Eaton noted two core issues: (1) publicly funded activities means the results are generally publicly available; and (2) some counties put similar information on the Internet, such as assessed valuations, landowners, legal descriptions, etc.

Ecology enforcement tools

Wallace introduced Stephen Bernath who facilitates the Water Quality Partnership for Ecology. This group is a standing policy advisory committee focused on the State's water quality management functions. In 1999, a "Water Quality Enforcement Review" was published by the Partnership. [Note: This document is available at <http://www.ecy.wa.gov/biblio/9918.html> as an Adobe Acrobat PDF file.]

Ecology has many enforcement tools, and the Legislature has given Ecology much discretion. Enforcement tools range from informal to formal actions. Wallace noted that with one exception, all tools are essentially the same no matter the water quality issue. The exception is with municipalities, Ecology can ban new sewer hookups in some situations. Stormwater enforcement is an emerging issue.

Becker said penalties assessed for municipal discharges do not seem comparable to dairies with discharges. Wallace responded that Ecology is looking at this. For the Metro spill, it was a pump failure, and Metro was required to monitor and report.

Bengen said limiting cows was similar to limiting sewer hookups. Dairy producers receive proportionately higher penalties. Representative Linville echoed that Metro discharges are not treated like dairy discharges.

Plan approval

Colvin brought an issue to the table regarding approval of dairy nutrient management plans by the NRCS. RCW 90.64 requires conservation districts to approve and certify plans. The Technical Advisory Committee made an approval checklist. The number one question on that checklist asks if the plan meets NRCS standards and specifications. The checklist does not require the district to get NRCS sign-off on the plan.

Salzer read an e-mail he received from Valerie Oksendahl (State Agronomist, NRCS) stating that NRCS did not need to approve a plan unless NRCS staff wrote it.

Additional discussion followed. Wallace noted that NRCS standards and specifications vary: some are strict, some are more flexible. A certain amount of local customization is allowed for some practices. Each conservation district should think about how to approve and certify plans. The Regional Technical Assistance Teams in RCW 90.64 is where regional and innovative things could be accomplished.

Colvin said as a conservation district board member, he does not feel comfortable making the call on whether a plan meets NRCS standards and specifications. Traditionally, district boards have looked to NRCS technical staff for confirmation.

Senator Rasmussen: How can you sign-off on something for which you don't have technical expertise? If you sign off but the plan doesn't meet standards and specifications, there could be an issue of liability.

Wallace noted the advantage of using NRCS to make this call is they stand behind their product. Conservation districts should obtain signature authority to approve plans, but it is each

district's call. With 50 years of credible science and experience behind them, NRCS standards and specifications are strong.

Salzer said the Conservation Commission could amend the minimum elements checklist and set a cutoff date for practice standards used. Cheney concurred, saying we should look at setting a date so everyone knows where we are at with regard to standards. Wallace said setting up an adaptive management process rather than picking out a date in time would be better. Standards and specifications in place when the plan was written should be used. Changes to the plan should meet new standards but should be phased in.

Colvin suggested the Technical Advisory Committee be convened to revisit the checklist. DeGroot suggested waiting on the use of a phosphorus index until we can see the impacts.

Pollution from neighboring farms

Salzer gave a brief introduction to this issue. It is listed as one of the tasks for the Task Force in the legislation.

Wallace said the easiest way to assess where pollution is coming from is to sample above and below the farm. Does Ecology need permission to access private property suspected of being a source of pollutants, asked Becker. Wallace said they seek permission first, and if that fails, they seek assistance from the sheriff.

DeGroot asked how Ecology determines the source of pollution: cows or ducks? Wallace said it was the best professional judgement of the inspector. Colvin asked how to handle a stream with a dairy on one side and a non-dairy livestock operation on the other. Additional discussion occurred.

Short asked about intermittent streams, and Wallace said inspectors would probably follow the same protocol of sampling above and below to locate sources.

Cheney noted this is the tip of the iceberg in terms of what happens upland of your farm, including the impact of increased flows.

Status of penalties

KauzLoric reported that since the inception of the program, Ecology has assessed about \$445,000 in penalties. After requests for relief made to Ecology or the Pollution Control Hearings Board, the total is \$349,000.

Last month, the amount collected was reported as \$64,000. This month, the amount collected went up \$15,000 to \$79,000.

As requested at the last Task Force meeting, Ecology provided a handout showing a county-by-county and regional breakdown of dairies and cows.

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The Notice of Correction wording revision suggested at the last Task Force meeting is underway. This is a collaborative process.

Wallace suggested that quarterly reports to the Task Force would work well with less frequent meetings next year. Senator Rasmussen agreed, asking Ecology to bring this information to the Task Force on a quarterly basis in the future.

The letter sent by Megan White (Ecology) to Senators Rasmussen and Roach was briefly discussed. Wallace pointed out the letter states Ecology would continue to work with the Task Force on dairy issues.

Engineering

Ryan Bartelheimer (P.E., Snohomish Conservation District) briefly reviewed his presentation from last month. He has fine-tuned his estimate of 34 FTEs (full-time equivalent engineering and technical staff) to 29.5 FTEs. This figure includes engineers and technicians doing design work, but does not include the actual writing of plans.

Senator Rasmussen: Do you have enough money in the budget statewide? Salzer noted that with nine engineers, 17 district dairy technicians, and about four NRCS engineers, there are approximately 30 people doing dairy planning and design work.

Several conservation districts (Whatcom, Snohomish, Skagit, Clallam and San Juan) are grouped as the North Puget Sound Geographic Priority Area for EQIP (Environmental Quality Incentives Program) funding. These districts received 292 requests for assistance under EQIP, of which 134 cost-sharing awards were made. They asked for \$5.6 million, were awarded \$2.6 million, and have obligated \$2.5 million.

When asked how the Whatcom Conservation District prioritizes technical assistance to dairy producers, Boggs said the highest priority is given to producers referred by Ecology. In the second tier are producers who have been awarded cost-sharing funds. Remaining producers are served on a first-come, first-served basis.

Funding issues

Cheney asked Boggs if the Whatcom Conservation District can make it with the money they have. Boggs responded that his district had just hired another planner, but they need more money to retain staff, describing this additional money as pivotal to their success.

Shavlik noted that funding constraints were insufficient to allow staff to do follow-up on dairy plans and provide education to producers.

Cheney noted they were able to get some money moved to dairy cost share. Salzer added that the Conservation Commission did work with the Office of Financial Management to get permission to use some of that money for additional technical assistance but was permission was denied.

Cheney asked Kelly if the Skagit Conservation District received the same amount of funding as in the last cycle, would the district have enough funds for all producers to receive dairy plans. Kelly said they have enough funding for one FTE, but they need two FTEs. Schuh added that conservation districts are now doing three things simultaneously: developing/approving dairy plans, certifying plans, and following up on implemented plans.

Senator Rasmussen asked that the Conservation Commission get a request for increased funding to the Office of Financial Management as soon as possible.

Suggestions from conservation districts

Salzer briefly presented some suggestions from two western Washington conservation districts. The first suggestion was language suggested for inclusion in dairy nutrient management plans to provide increased flexibility to dairy producers in their day-to-day management of nutrients. The second was a one-page form designed to avoid having to re-approve a plan if additional acres for spreading dairy wastes became available.

The first suggestion came about because of an issue in which a dairy producer was using a manure application method not described in his dairy nutrient management plan.

Bengen said the system needs to be changed. You can't write everything into a plan. Producers need more flexibility. Wallace and KauzLoric noted that in the situation where the injector was used, it was not clear to the inspector that the application rate was agronomic because the application method was not assessed in the plan.

Colvin asked how specific or unspecific is a farm plan, and how closely will Ecology enforce the contents of a plan.

Shavlik suggested that the ideal situation would be that instead of writing a Notice of Correction, the Ecology inspector could ask for assistance from the local district and NRCS. Ecology representatives agreed this would be a step the dairy inspectors could take but also need to retain the option of issuing enforcement actions when permitted facilities are not following permit conditions related to the requirement to have a nutrient management plan and follow it.

Final report

Salzer suggested that for preparing the final report, he could put together a rough outline of what could be covered and ask the legislators on the Task Force to review it before the next meeting. Senator Rasmussen concurred, stating that several key topics should be covered, including:

1. Potential to pollute.
2. Dollars needed.
3. Changes made because of the work of the Task Force.
4. Successes we've experienced.

Next meeting and adjournment

The next meeting will be held on November 21, 2000 in Olympia in the Cherberg Building, Hearing Room B, from 10:00 a.m. to 3:00 p.m.

The meeting was adjourned at 3:00 p.m.

Summary of action items

1. Delay approval of September minutes to the November meeting.
 2. Task Force letter to NRCS requesting opportunity to review the Phosphorus Index and provide input.
 3. Ecology to bring penalty and enforcement information to the Task Force quarterly.
 4. Conservation Commission asked to get a request for increased funding to the Office of Financial Management as soon as possible.
 5. Rough outline of final report to be presented at next meeting.
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Respectfully submitted,

Tom Salzer